

H.R. 2738, THE U.S.-CHILE FREE TRADE AGREEMENT IMPLEMENTATION ACT
SECTION-BY-SECTION SUMMARY
PREPARED BY THE COMMITTEE ON WAYS AND MEANS

Sections 1-3: Short title, purposes and definitions

TITLE I: APPROVAL AND GENERAL PROVISIONS

Section 101: Approval and Entry into Force

Section 101 states that Congress approves the agreement and the Statement of Administrative Action and provides that the Agreement enters into force when the President determines that Chile is in compliance and has exchanged notes, on or after January 1, 2004.

Section 102: Relationship of the Agreement to U.S. and State Law

Section 102 provides that U.S. law is to prevail in a conflict and states that the Agreement does not preempt state rules that do not comply with the Agreement. Only the United States is entitled to bring a court action to resolve a conflict between a state law and the Agreement.

Section 103: Consultation and Layover for Proclaimed Actions

Section 103 provides that if the President is given proclamation authority subject to consultation and layover, the President may proclaim action only after he has: obtained advice from the International Trade Commission and the appropriate private sector advisory committees; submitted a report to the Ways & Means and Finance Committee concerning the reasons for the action; and consulted with the Committees. The action takes effect after 60 days have elapsed.

Section 104: Implementing Actions in Anticipation of Entry into Force and Initial Regulations

Section 104(a) provides that after the date of enactment, the President may proclaim actions and issue regulations as necessary to ensure that any provision of this Act that takes effect on the date that the Agreement is entered into force is appropriately implemented, but not before the effective date.

Section 104(b) establishes that regulations necessary or appropriate to carrying out the actions proposed in the Statement of Administrative Action shall, to the maximum extent feasible, be issued within one year of entry into force or the effective date of the provision.

Section 105: Administration of Dispute Settlement Proceedings

Section 105 authorizes the President to establish an office within the Commerce Department responsible for providing administrative assistance to any panels that may be established under the Agreement and authorizes appropriations for the office and for payment of

the U.S. share of expenses.

Section 106: Arbitration of Claims

Section 106 authorizes the United States to resolve certain claims covered by the Investor-State Dispute Settlement Procedures set forth in the Agreements and specifies that all U.S. government contracts are to contain a choice of law provision for resolving any breach of contract claim.

Section 107: Effective Dates; Effect of Termination

The effective date of this Act is date of entry into force except sections 1-3 and Title I take effect upon date of enactment. The provisions of the Act terminate on the date on which the Agreement ceases to be in force.

TITLE II: CUSTOMS PROVISIONS

Section 201: Tariff Modifications

Section 201(a) provides the President with the authority to proclaim tariff modifications to carry out the Agreement. It terminates Chile's status as a beneficiary of the Generalized System of Preferences.

Section 201(b) gives the President the authority to proclaim further tariff modifications as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Chile provided for by the Agreement.

Section 201(c) allows, in addition to any duty collected under the Agreement, the assessment of a duty on an agricultural safeguard good if the unit import price of the good when it enters the United States is less than the trigger price for that good in the Agreement. However, no additional duty may be assessed if the good is subject to an entry under the global safeguard of the Agreement or Title II of the Trade Act of 1974. The authority to apply such an agriculture safeguard to a good terminates on the earlier of date on which that good first receives duty-free treatment under the Agreement or twelve years after the Agreement's entry into force.

Section 202: Rules of Origin

Section 202 codifies the rules of origin set out in Chapter 4 of the Agreement. Under the general rules, there are three basic ways for a good of Chile to qualify as an "originating good," and therefore be eligible for preferential tariff treatment when it is imported into the United States. A good is an originating good if: (1) it is "wholly obtained or produced entirely in the territory of Chile, the United States or both." (2) those materials used to produce the good that are not themselves originating goods are transformed in such a way as to cause their tariff classification to change or meet other requirements, as specified in Annex 4.1 of the Agreement; or (3) it is produced entirely in the territory of Chile, the United States, or both exclusively from

originating materials.

Under Chapter 4.1 rules, an apparel product must generally meet a tariff shift rule that implicitly imposes a “yarn forward” requirement. Thus, to qualify as an originating good imported into the United States from Chile, an apparel product must have been cut (or knit to shape) and sewn or otherwise assembled in Chile from yarn, or fabric made from yarn, that originates in Chile or the United States.

The remainder of section 202 of the implementing bill sets forth more detailed rules for determining whether a good meets the Agreement’s requirements under the second method of qualifying as an originating good. These provisions include rules pertaining to *de minimis* quantities of non-originating materials that do not undergo a tariff transformation, transformation by regional content, and the alternative methods for calculating regional value content. Other provisions in section 202 address valuation of materials and determination of the originating or non-originating status of fungible goods and materials.

Section 203: Drawback

Section 203 of the bill implements Article 3.8 of the Agreement, which begins a 3-year, phased elimination of duty drawback and duty deferral programs between the United States and Chile within eight years of the entry into force of the Agreement. Specifically, eight years after the Agreement enters into force, the United States will reduce the refund, waiver, or remission of duties subject to duty drawback or duty deferral programs by the following formula: 75 percent during the first year period; 50 percent in the following year; and 25 percent during the final year. The formula will be applied to drawback claims for duties paid on imported goods that are subsequently exported, as well as duties for which the payment has been deferred because of their introduction into a foreign-trade zone or other duty deferral program.

Section 203(c) of the bill makes clear that no amendment contained in section 203 authorizes the refund, waiver, or reduction of countervailing or antidumping duties imposed on a good imported into the United States. This provision is consistent with Article 3.8(2)(a) of the Agreement and current U.S. law.

Section 204: Customs User Fees

Section 204 of the bill implements U.S. commitments under Article 3.12(4) of the Agreement, regarding the exemption of the merchandise processing fee on originating goods. This provision is similar to the one from the implementing legislation for the North American Free Trade Agreement. The provision also prohibits use of funds in the Customs User Fee Account to provide services related to entry of originating goods in accordance with U.S. obligations under the General Agreement on Tariffs and Trade 1994.

Section 205: Disclosure of Incorrect Information

Section 205 of the bill implements Articles 4.16(4) and 4.16(5) of the Agreement. The provision prohibits the imposition of a penalty upon importers who make an invalid claim for

preferential tariff treatment under the Agreement if the importer acts promptly and voluntarily to correct the error. If an importer so acts more than once, falsely or without substantiation, U.S. authorities may suspend preferential treatment with respect to identical goods imported by that importer.

Section 206: Reliquidation of Entries

Section 206, in accordance with Article 4.12 of the Agreement, provides authority for the Customs Service to reliquidate an entry to refund any excess duties (including any merchandise processing fees) paid on a good qualifying under the rules of origin for which no claim for preferential tariff treatment was made at the time of importation if the importer requests, within one year after the date of importation. Current law provides similar authority for NAFTA entries.

Section 207: Recordkeeping Requirements

Section 207 of the bill, in accordance with Article 4.14 of the Agreement, provides that an importer claiming preferential tariff treatment for a good shall maintain, for a period of five years after the date of importation, a certificate of origin or other information demonstrating that the good qualifies as originating.

Section 208: Enforcement of Textile and Apparel Rules of Origin

Section 208 of the bill implements the verification provisions of the Agreement at Article 3.21 and authorizes the President to take appropriate action while the verification is being conducted, including suspending the application of preferential tariff treatment to the textile or apparel good for which a claim of origin has been made or for textile or apparel goods exported or produced by the person subject to a verification. If the President is unable to make a determination within 12 months of the date of the request, the President may take appropriate action, including denial of entry to the textile or apparel goods subject to the verification, to similar goods exported or produced by the person that exported or produced the good, or to any textile or apparel goods exported or produced by the person subject to the verification.

Section 209: Conforming Amendments

Section 209 makes conforming technical amendments to the Tariff Act of 1930 related to the changes in the drawback statute in Section 203.

Section 210: Regulations

Section 210 provides that the Secretary of the Treasury shall issue regulations to carry out provisions of this bill related to duty drawback, rules of origin, and Customs user fees.

TITLE III: RELIEF FROM IMPORTS

Subtitle A: Relief from Imports Benefiting from the Agreement (Sections 311-316)

Sections 311-316 authorize the President, after an investigation and affirmative determination by the U.S. International Trade Commission, to impose specified import relief when, as a result of the reduction or elimination of a duty under the Agreement, a Chilean product is being imported into the United States in such increased quantities and under such conditions as to be a substantial cause of serious injury or threat of serious injury to the domestic industry.

Section 311(c) defines “substantial cause” in the same manner as Section 201 of the Trade Act of 1974.

Section 311(d) exempts from investigation under this section Chilean articles that have been the basis previously for relief since entry into force under this safeguard or if, at the time the petition is filed, the article is subject to import relief under the global safeguard provisions in section 201 of the Trade Act of 1974.

Under section 312(b) if the ITC makes an affirmative determination, it must find and recommend to the President the amount of import relief that is necessary to remedy or prevent serious injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

Under section 313(a), the President must provide import relief to the extent that the President determines is necessary to remedy or prevent the injury found by the ITC and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Under section 313(b), the President is not required to provide import relief if the President determines that the relief will not provide greater economic or social benefits than costs. Section 313(c) sets forth the nature of the relief that the President may provide as: a suspension of further reductions for the article; or an increase to a level that does not exceed the lesser of the existing most favored nation (MFN)/normal trade relation (NTR) rate or the MFN/NTR rate imposed when the Agreement entered into force. The provision further states that if the President provides relief for greater than one year, it must be subject to progressive liberalization at regular intervals over the course of its application.

Section 313(d) states that the import relief that the President is authorized to provide may not exceed three years. If the President provided an initial period of relief of less than three years, the President may extend the relief under certain circumstances, but the aggregate period of relief, including extensions, may not exceed three years.

Section 314 provides that no relief may be provided under this subtitle after ten years from the Agreement’s entry into force, unless the tariff elimination for the article under the Agreement is twelve years, in which case relief may not be provided for that article after twelve years from entry into force.

Section 315 authorizes the President to provide compensation to Chile consistent with

article 7.4 of the Agreement.

Section 316 provides for the treatment of confidential business information.

Subtitle B: Textile and Apparel Safeguard (Sections 321-328)

Section 321 provides that a request for safeguard relief under this subtitle may be filed with the President by an interested party. The President is to review the request and determine whether to commence consideration of the request. If the President determines to commence consideration of the request, he is to publish a notice commencing consideration and seeking comments. The notice is to include the request itself.

Section 322(a) of the Act provides for the President to determine, pursuant to a request by an interested party, whether, as a result of the elimination of a duty provided under the Agreement, a Chilean textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

Section 322(b) identifies the relief that the President may provide, which generally represents the MFN/NTR duty rate for the article at the time relief is granted. Section 323 of the bill provides that the initial period of relief shall be no longer than three years, although if the initial period for any import relief is less than three years, the President may extend the total relief for a period of up to three years under certain circumstances. Section 324 provides that relief may not be granted to an article under this safeguard if relief has previously been granted under this safeguard. Under section 325, after the safeguard expires, the article that had been subject to such action shall be subject to duty-free treatment.

Section 326 of the bill states that the authority to provide this safeguard relief expires eight years after the textile and apparel provisions of the Agreement take effect. Section 327 of the Act gives authority to the President to provide compensation to Chile if he orders relief. Section 328 provides for the treatment of business confidential information.

TITLE IV: TEMPORARY ENTRY OF BUSINESS PERSONS

[These provisions are not within the jurisdiction of the Committee on Ways & Means.]